

**REMARKS**

Claims 1-17 are rejected as obvious from *Gao* (U.S. Patent No. 6,095,650) in view of *Foley* (U.S. Patent No. 6,535,223). Present claim 2 is amended to emphasize the elliptical feature of the present invention, in combination with the measurement of a facial feature. It is not perceived that the cited references suggest this elliptical feature.

Applicant also respectfully refers to the Declaration swearing behind the *Foley* reference, submitted on 2 January 2004 . This Declaration should render the *Foley* reference inoperative. 37 CFR 1.131 says that a person qualified under 37 CFR 1.47 may sign. According to 37 CFR 1.47(a), if an inventor cannot be found or reached after diligent effort, the declaration may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. This is exactly the situation described by the Declaration submitted on 2 January 2004.

Also, 37 CFR 1.131(b) states that absence of original exhibits need not be included if their absence is satisfactorily explained. Here, the Declaration explained that the co-inventor had not been reached after diligent effort, and original exhibits that might still exist would be in the possession of the non-signing co-inventor. It is respectfully believed that this was a satisfactory explanation.

CONCLUSION

For all of these reasons, it is not perceived how the claimed invention can be derived from the valid prior art, or how it might be obvious in view of the valid prior art, or even in further view of *Foley* which is not valid as prior art. The references do not suggest what is set out in the applicant's claims, and do not provide the basis for developing the invention to persons having ordinary skill in the art to which the subject matter pertains. Therefore, withdrawal of the rejections is respectfully requested, and early allowance is earnestly solicited.

Respectfully submitted,

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